IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 1223 OF 2001

IN

SUMMARY SUIT NO. 696 OF 2001

Smt. Neeta N. Sanghavi ..Plaintiff

versus

Mohanlal G. Joshi ..Defendant

Mr. Tushar Goradia for the Plaintiff.

Mr. A. H. Khatri i/b. Pravin Mehta & Mithi & Co. for the Defendant.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH SEPTEMBER, 2004.

P.C. :

1. Heard counsel for the plaintiff and defendant. Leave to amend was granted to enable the plaintiff to correct the name of the defendant from Mohanlal G. Doshi to Mohanlal G. Joshi. Amendment carried out forthwith.

2. Suit is based on a receipt of investment amount of Rs.1,00,000/= dated 23.5.1997 Exhibit 'A' and acknowledgment Exhibit 'B' letter dated 1.4.1998. The defendant has admitted liability by

his confirmation letter. He has also paid some interest but subsequently nothing was paid. Therefore the above suit.

3. Defence of the defendant is that this amount was adjusted by them as per his letter dated 1.5.1998 towards partial payment of price of a flat valued at Rs.37 lacs. The defendant could not produce any document that the plaintiff has authorised him to make such adjustment. There is no agreement between the parties for purchase of the flat and this unilateral adjustment is not binding upon the plaintiff. Therefore conditional leave to defend is granted to the defendant upon defendant's depositing Rs.1,00,000/= (Rupees One lac) in this court within a period of six weeks from today.

3. In the event of the defendant depositing the said amount, the suit to be transferred to the list of Commercial Causes. Written statement or points of defence to be filed within a period of eight weeks from today and affidavit of documents or list of documents within two weeks thereafter. Discovery or inspection of documents within two weeks thereafter. Suit to be placed on regular board for hearing thereafter.

4. In the event of the defendant depositing the amount of Rs.1,00,000/= (Rupees One Lac) in the

court as aforesaid, the Prothonotary & Senior Master to invest the said amount with a Nationalised Bank, initially for a period of three years and to renew the same thereafter for suitable periods until further orders of the court. Counsel for the plaintiff company to follow the investment order with the Prothonotary & Senior Master.

5. If the defendant fails to deposit the aforesaid amount in the court, liberty to the plaintiff to have the suit set down forthwith for exparte hearing. The summons for judgment disposed of.

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